

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

JAMES PEASE,

Plaintiff,

Case No. 20-cv-00103

v.

WHITEWATER UNIFIED SCHOOL DISTRICT,
and MARK ELWORTHY,

Defendants.

**EMERGENCY MOTION TO EXTEND TIME
FOR FILING DISPOSITIVE MOTION**

NOW COME Defendants Whitewater Unified School District and Mark Elworthy, by and through their attorneys, Axley Brynelson, LLC, hereby move the Court for the deadline for filing dispositive motions be extended by one day pursuant to Fed. R. Civ. P. 6(b)(1)(B). In support of their motion, Defendants state as follows:

1. The deadline by which to file dispositive motions in this action was November 1, 2021. (Dkt. 52.)

2. On November 1, 2021, Defendants timely filed their Motion for Summary Judgment, (Dkt. 57), along with supporting declarations and exhibits by Mark Elworthy, (Dkt. 58), and Nicholas Schiavo. (Dkt. 59.)

3. On November 1, 2021, Defendants' counsel experienced a medical emergency which required that she be hospitalized. [Declaration of Elizabeth C. Stephens ("Stephens Decl.")

¶ 3.]

4. Defendants' counsel's medical emergency precluded her from filing Defendants Brief, Proposed Findings of Fact, and other documentation in support of Defendants' Motion for Summary Judgment on November 1, 2021. (Stephens Decl. ¶ 4.)

5. During her medical emergency, Defendants' counsel, in good faith, attempted to file certain documents in support of Defendants' Motion for Summary Judgment, including Defendants' Brief in Support of Summary Judgment, (Dkts. 60, 62), and Defendants' Proposed Findings of Facts. (Dkt. 61.) However, Defendants' counsel was unable to file the appropriate documents in this regard. (Stephens Decl. ¶ 5.)

6. Defendants' counsel was released from the hospital on November 2, 2021. (Stephens Dec. ¶ 6.)

7. On November 2, 2021, Defendants filed corrected versions of Defendants' Brief in Support of Summary Judgment, (Dkt. 64), and Defendants' Proposed Findings of Fact, (Dkt. 65), as well as Defendants' counsel's declaration and supporting documentation. (Dkt. 63.)

8. Fed. R. Civ. P. 6(b) permits the Court to "extend the time . . . with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires, or . . . on motion made after the time has expired if the party failed to act because of excusable neglect."

9. In determining whether excusable neglect exists, courts are guided by the factors the Supreme Court identified in *Pioneer Investment Services Co. v. Brunswick Associates, Ltd.*, 507 U.S. 380, 395 (1993): (1) the danger of prejudice to the non-movant, (2) the length of the delay and its impact on the judicial proceedings, (3) the reason for the delay (including whether the delay was within the control of the movant), and (4) the movant's good faith. *See Raymond v. Ameritech Corp.*, 442 F.3d 600, 605 (7th Cir. 2006) (applying *Pioneer* factors to Rule 6).

10. Here, the delay was outside Defendants' counsel's control; it constituted just one day; it was minimal, constituting just one day; and was not made in bad faith.

11. Defendants, of course, do not object to a similar extension of time for Plaintiff's to file their response to Defendants' Motion for Summary Judgment.

CONCLUSION

Accordingly, for the reasons set forth above, Defendants respectfully request that the Court extend the deadline for filing dispositive motions by one day. In addition, Defendants respectfully request that the Court credit the following dockets: 57, 58, 59, 63, 64, and 65. Similarly, Defendants respectfully request that the Court disregard the following dockets: 60, 61, and 62.

Dated this 3rd day of November, 2021.

AXLEY BRYNELSON, LLP

/s/ Elizabeth C. Stephens

Lori M. Lubinsky, SBN 1027575

Elizabeth C. Stephens, SBN 1093994

Attorneys for Defendants

Post Office Box 1767

Madison, WI 53701-1767

Telephone: (608) 257-5661

Fax: (608) 257-5444

Email: llubinsky@axley.com

estephens@axley.com